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MAR 04 2008

In re Application of
Chen et al.
Application No. 10/613,750
Filed: July 3, 2003
Attorney Docket No. B-5154 621086-5

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ON PETITION

This is a decision on petition to withdraw the holding of abandonment under 37 CFR 1.181 filed January 22, 2008.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This application was held abandoned August 16, 2007 for failure to timely reply to the non-final Office action mailed on May 15, 2007. The Notice set a three (3) month extendable time period for reply. A Notice of Abandonment was mailed January 7, 2008.

Petitioner asserts that a reply to the non-final Office action was submitted on August 15, 2007. As evidence, petitioner has submitted a copy of the reply which contains an amendment, specification, claims and figure 3. The response also includes a certificate of mailing dated August 15, 2007 pursuant to 37 CFR 1.8. Petitioner has also provided a copy of a postcard receipt with an Office stamp of August 20, 2007.

Pursuant to 37 CFR 1.8, correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement. The Office may require additional evidence to determine if the correspondence was timely filed.

Petitioner has failed to meet requirement (3). Petitioner has established that correspondence was received in the Office on August 20, 2007 via the postcard receipt. However since the date on the postcard receipt is not within the shortened statutory time period of reply, petitioner has failed to establish that the correspondence was timely mailed.

Petitioner must provide a statement which attest on personal knowledge that the documents were mailed on August 15, 2007. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). A review of the certificate of mailing shows that it was executed by Richard P. Berg. A statement has not been provided by Mr. Berg nor has Attorney Krayner provided a statement.

It is further noted that Attorney Krayner has not been given the authority to prosecute the above-identified application. If appropriate a power of attorney should be provided.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service: U.S. Patent and Trademark Office
(FedEx, UPS, DHL, etc.) Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Charlema R. Grant". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charlema R. Grant
Petitions Attorney
Office of Petitions